



## Transcript of Proceedings

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Date: 6 December, 2005

SUPREME COURT

CIVIL JURISDICTION

JUSTICE JONES

Claim No 74 of 2000

BRUCE DAVIS PTY LTD as trustee  
for the "CENTENARY STAR TRUST"

Plaintiff

and

THE SHIP "KESTREL BAY" AUSTRALIAN  
REGISTERED SHIP NO. 856220 AS  
SURROGATE FOR THE SHIP  
"KESTREL BAY"

Defendant

and

CHRISTOPHER EDWARDS

Third Party

CAIRNS

..DATE 01/12/2005

JUDGMENT

**WARNING:** The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: This is an application by the plaintiff for an order that a Mr Christopher Edwards, who is currently a third party in the proceedings be joined as a second defendant in the action.

This application is made in reliance upon rule 69(2), paragraph (iv) of the Uniform Civil Procedure Rules. The circumstances which I will shortly outline, the plaintiff claims, gives rise to some doubt as to the identity of the right person against whom the allegation can be made as being in control of the vessel at the time it collided with another vessel on the 20th of July 1998. The sub rule requires that the person who is to be included now as the defendant outside the period of limitation should be given notice of the Court's intention to make the order.

I am satisfied that that person has been given notice. Moreover, he has retained Templeton Smith Solicitors whose letter to the plaintiff's solicitors as now dated 1 December 2005, is Exhibit 2 on this application. The letter requests that the Court be notified that Mr Edwards neither consents to nor opposes the application. The solicitors for the defendant make no objection to the joinder of Mr Edwards as a second defendant, see Exhibit 1.

The circumstances which have given rise to the need to make the application at this time is that after the action was commenced within the limitation period, and after the defence of the defendant was delivered on 18 July 2003, some confusion

about the identity of the master of the vessel at the time of the incident arose because the master was identified in the defence as under the name of "Evans".

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Moreover, after that defence was filed the process of discovery indicated that whilst there was a suggestion that the vessel was subject to a charter party to Maxitrans Pty Ltd, no copy of the charter party document could be found. The true owner of the vessel, Sea Swift Pty Ltd, by filing a defence, has indicated that it is a relevant person within the meaning of the Admiralty Act, suggesting that it may be liable on an in personam basis.

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The present defendant joined Mr Edwards as a third party in September 2004 by which time the limitation period - if it is indeed, a six year limitation period, had expired. It was alleged in that third party statement of claim that a "Mr Edwards" was the master. Mr Edwards filed a defence to that third party statement of claim on the 17th of November 2005 in which he made the admission that he was indeed, the master and in control of the navigation of the vessel at the date of the incident on the 20th of July 1998. So, to some extent the confusion which is engendered by the earlier documents and by the lack of adequate discovery was laid to rest by that admission which has come forward only recently.

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There remains however, still some confusion, given the absence of any charter party arrangement between Sea Swift Pty Ltd and Maxitrans Pty Ltd and particularly, because there is a

contract between Maxitrans Pty Ltd and C-JAMS Marine Services  
for the latter party to manage the vessel. Whether this will  
give rise to some further issues about the control of the  
vessel and Mr Edwards' role in the control of the vessel  
remains to be seen. But in the light of his admission, coming  
forward for the first time only recently, it is clear that he  
is a necessary party to the proceedings and there is shown a  
proper basis for his joinder as a defendant.

In those circumstances I will make the orders which are now  
initialled by me and placed with the papers.

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